

The Board has considered the record and adopts the stipulations contained in the Award of the Administrative Law Judge.

### ISSUES

What is the nature and extent of claimant's injury? In claimant's brief, the issue of whether claimant suffered accidental injury arising out of and in the course of her employment was raised. However, at oral argument, the parties stipulated that issue was no longer before the Board for its consideration.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire evidentiary record filed herein, the Board finds the Award of the Administrative Law Judge should be affirmed.

Claimant worked for respondent as a scheduler. This included ordering tools, clocking parts into areas, placing parts where they belonged and debuggging parts. In December of 2000, claimant began developing problems in her right hand, wrist and forearm. Claimant's condition worsened until January 2001, when she reported the problem to her employer. She was moved to a different area and was referred for medical treatment.

Claimant ultimately came under the care of board certified orthopedic hand surgeon J. Mark Melhorn, M.D. Dr. Melhorn diagnosed de Quervain's in claimant's right upper extremity and performed surgery for same on April 10, 2001. Claimant was released from Dr. Melhorn's care on June 8, 2001. On July 19, 2001, claimant returned to Dr. Melhorn with left arm, elbow and hand complaints. This was the first time Dr. Melhorn noted any complaints to claimant's left upper extremity. Claimant testified that when she returned to work, her right wrist was placed in a wrist band and she was forced to utilize only her left hand for anything she did. Claimant then began experiencing pain and soreness in her left hand. Claimant did testify to a specific increase in pain on April 3, 2001, when she grabbed a tool with her left hand. This resulted in a burning sensation from her left elbow to her left wrist. Claimant's left upper extremity problems were reported to her foreman.

Dr. Melhorn treated claimant's left upper extremity, finding a gradual resolution and testifying that claimant reached maximum medical improvement on August 3, 2001. He found, pursuant to the American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (4th ed.), that claimant suffered no permanent impairment to her left upper extremity. Dr. Melhorn rated claimant's right upper extremity at 5.2 percent at the level of the forearm. This rating was also pursuant to the AMA *Guides* (4th ed.).

Claimant was referred by her attorney to Pedro A. Murati, M.D., board certified in physical medicine and rehabilitation. He examined claimant on September 12, 2001.

Dr. Murati diagnosed right thumb pain status post de Quervain's surgery, left ulnar cubital syndrome, left carpal tunnel syndrome and right radial nerve neuropathy. He rated claimant at 12 percent impairment to the right upper extremity, which converts to a 7 percent whole person impairment, and 19 percent impairment to the left upper extremity, which converts to an 11 percent whole person impairment. Using the combined values chart, claimant had a 17 percent whole person impairment. This rating was pursuant to the *AMA Guides* (4th ed.). Dr. Murati testified that claimant's left upper extremity problems were a direct and natural result of her right upper extremity injuries, calling it an overuse syndrome.

Claimant was referred for nerve conduction tests on the left upper extremity to Debra Engel, a nerve conduction technologist trained at the University of Kansas Medical Center and VA Hospital in Kansas City. Ms. Engel testified that she had been conducting nerve conduction studies for 13 years and is the only nationally board certified technologist in the State of Kansas. She performed nerve conduction studies on claimant's left upper extremity, which she described as normal, even though the ulnar nerve motor testing result dropped 22 microseconds as measured across the elbow. The record is in conflict regarding whether this result was normal. Larry Wilkinson, M.D., board certified in family practice, Ms. Engel and Dr. Melhorn all considered this drop to be a normal reading. Dr. Murati considered this to be an abnormal result.

Due to the conflict, claimant was referred to board certified physical medicine specialist George G. Fluter, M.D., for an independent medical examination by the Administrative Law Judge. Dr. Fluter examined claimant on November 12, 2001, diagnosing left upper extremity pain, right hand pain, status post surgical release of right de Quervain's and left ulnar neuropathy at the elbow. Dr. Fluter opined that there was a causal relationship between claimant's current bilateral upper extremity conditions and her work activities. He opined that a drop in the conduction velocities of the left ulnar motor nerve across the elbow of approximately 22 microseconds represented a significant decrease in signal velocity. He found claimant to have suffered a 10 percent impairment to the left upper extremity at the elbow and a 3 percent impairment to the right upper extremity. Using the combined values chart of the *AMA Guides* (4th ed.), he assessed claimant an 8 percent whole body impairment for the bilateral injuries suffered while employed with respondent.

In workers' compensation litigation, it is claimant's burden to prove her entitlement to benefits by a preponderance of the credible evidence.<sup>1</sup>

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<sup>1</sup> See K.S.A. 44-501 and K.S.A. 44-508(g).

It is well determined in workers' compensation litigation that a scheduled injury may evolve into a general disability through the subsequent occurrence of direct and natural consequences.<sup>2</sup>

Additionally, when a primary injury under the Workers' Compensation Act is shown to arise out of and in the course of employment, every natural consequence that flows from the injury, including a new and distinct injury, is compensable if it is the direct and natural result of the primary injury.<sup>3</sup>

In this instance, claimant suffered accidental injury to her right upper extremity while employed with respondent. Thereafter, when her right wrist was placed in a wrist band, she was forced to utilize only her left upper extremity for her work. She then developed problems with her left upper extremity. These problems were a natural consequence of the right upper extremity injuries. Both Dr. Murati and Dr. Flutter found claimant suffered permanent injury to her left upper extremity. The Board acknowledges Dr. Melhorn disagrees with this finding, but finds the opinion of the independent medical examiner to carry the greatest weight in this instance. The Board, therefore, finds that claimant has suffered an injury to her bilateral upper extremities arising out of and in the course of her employment with respondent and claimant's award should be based upon a whole body impairment.

The Administrative Law Judge in awarding claimant a 12.5 percent permanent partial impairment of function to the body as a whole utilized the opinions of Dr. Murati and Dr. Flutter in reaching that result. The Board finds this to be appropriate and affirms the Administrative Law Judge's award.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Nelsonna Potts Barnes dated July 31, 2002, should be, and is hereby, affirmed and claimant is awarded a 12.5 percent permanent partial functional disability to the body as a whole for the injuries suffered while employed with respondent.

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<sup>2</sup> *Berger v. Hahner, Foreman & Cale, Inc.*, 211 Kan. 541, 549, 506 P.2d 1175 (1973).

<sup>3</sup> *Jackson v. Stevens Well Service*, 208 Kan. 637, 493 P.2d 264 (1972).

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of January 2003.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Dale V. Slape, Attorney for Claimant  
Kirby A. Vernon, Attorney for Respondent  
Nelsonna Potts Barnes, Administrative Law Judge  
Director, Division of Workers Compensation